

WASHINGTON INSURANCE COMMISSIONER'S  
AGENT/BROKER ADVISORY COMMITTEE  
MEETING MINUTES OF  
March 25, 2003  
PROPERTY/CASUALTY MEMBERS

**Property & Casualty Representatives:** Harold Anderson, Kenneth I. Tobey, Inc.; Betty Baker, Newton Insurance Co.; Robert Bush, Valley Insurance Agency; P. Leon Giles, Sprague Israel Giles, Inc.; David Hargreaves, Argus Insurance, Inc.; Kendel Lyman, Surplus Line Association of Washington; Thomas Long, Aon Risk Services, Inc. of Washington; Ray Peretti, Hub Insurance Agency; Steve Sakahara, Sakahara & Hasimoto; and Carole Stewart, IBA West

**Absent Members:** Kim Impecoven, Blasingame Insurance

**Office of Insurance Commissioner (OIC) Representatives:** Mike Kreidler, Commissioner; Beth Berendt, Deputy Commissioner for Rates & Forms; Scott Jarvis, Deputy Commissioner for Consumer Protection; Jim Odiorne, Deputy Commissioner for Company Supervision; Mike Huske, Manager for Investigations/Examinations; Lisa Smego, Senior Policy Analyst for Property & Casualty; Ruth Ammons, Staff Attorney for Policy; Gail Jones, Recorder

**Commissioner's Comments:**

Commissioner Kreidler welcomed the participants. He gave a brief update of the current Legislative Session and the Governor's budget proposals. It was noted that OIC sponsored bills are clearing the Legislature. The Commissioner pointed out that in the most recent budget proposal, \$2,000,000 would be removed from the reserve account and several FTEs would be eliminated at OIC. This is very difficult for our agency considering the current hard market. We are working with the Legislature regarding the budget proposal and are optimistic, but we can certainly use help at this point. The majority of dollars from a cut would be returned to out of state insurance companies. Regarding the File and Use bill, the Commissioner noted that there should have been interim discussion, but the bill was passed to the Rules Committee and the outcome was left uncertain. For this reason, he chose to address the bill at a press conference, bringing subsequent attention to it.

Thomas Long mentioned that he noticed comments in the press and was surprised that the bill came about and that no one had heard anything about the bill until the Commissioner spoke. Harold Anderson mentioned that this was the first time he has seen an irritated Mike Kreidler. Thomas Long asked the Commissioner if OIC is in a position to entertain a rates and form change. The Commissioner replied that we would need to talk about it and that OIC is always willing to negotiate with the industry to find middle ground.

### **NAIC Activity:**

Kendel Lyman and Mike Kreidler attended the most recent NAIC meeting. The NAIC is focusing on issues of a federal regulatory presence and is moving ahead with an interstate compact. The Commissioner is unsure about the workability of an interstate compact because of the need for the individual states to agree. A shadow compact is in place to mimic the process as if other states had already passed it -- we will want to see if that works. We need the major states to participate for the compact to work and they always seem to be the last states to enter into an agreement. The treatment of association health plans is also a big issue. How the NAIC positions itself on the issue of asbestos liability is an increasing challenge for insurance companies. The CEO from Liberty Mutual challenged the NAIC. The emphasis that is coming from companies and insurers is that victims need to be actively represented and you can't have a trust fund that is not adequately funded.

### **Washington Legislation:**

Lisa Smego provided OIC's summary of bills before the legislature. She noted that the first bill listed is a simple technical revision to the insurance code and the second bill listed is not specifically limited to automobile insurance but applies to personal injury protection. The existing statutes are a mess. We worked with the definitions and re-wrote the bill -- it should be successful and pass into law shortly. The third bill listed deals with insurance company and market conduct exams and the public release of examiner's work papers. Jim Odiorne stated that because releasing certain information could be detrimental to a company, work papers shouldn't be shared. The Commissioner stated that while companies are supportive of our position, newspaper publishers are not. The trial bar is seeking to use this information and hospitals are concerned about the Premiera conversion and confidentiality issues. The malicious harassment bill deals with hate crimes and the cancellation or non-renewal of policies as a result of these crimes. It is an important bill that was brought forward by the Jewish community. The House left it as it was drafted, the Senate version added a police requirement -- we are unsure if the Senate version is workable.

Commissioner Kreidler addressed the single premium credit insurance bill and said that he was disturbed that it is even being marketed. The same bill was proposed last year and failed. He noted that under general authority, OIC can do the same thing by rule as legislation -- ban the product. Interestingly, the same people in the industry who were opposed to the bill are now saying they would appreciate it if we would let the bill pass -- without rules being done. It is now up to them to sponsor and push the bill.

Ruth Ammons discussed the employer-owned insurance bill. This bill pertains to the life insurance policies corporations and banks are purchasing on their employees. The insurable interest law requires that the employer have a significant economic interest in the continuing life or health of the employee, which essentially means that the employee must be more valuable to the employer alive than dead. She indicated that OIC is tightening the requirements for these policies, i.e., employees must give written consent, must be told specifics about the policy being purchased, retaliation is prohibited if the employee does not consent, and has strict insurable interest requirements.

Robert Bush asked if the burden will be placed on the agent. Ruth indicated that it is the employer's responsibility to obtain consent. If the employer claims that they didn't know about the law, then the agent is responsible. David Hargreaves stated that law firms have key-man policies and asked if there was a provision for group life. Answer: "key-man" is permissible, but we are requiring employee consent and need to make sure employees know that a policy exists on them.

It was noted that the Unlawful Transaction of Insurance Bill has been discussed before. Some amendments have been added and the bill has passed both houses without any testimony against. We used existing penalty laws and increased the penalty to a Class B for knowing violations of five existing provisions done knowingly. Four of the five crimes are ranked at a level 4, which means that a person without any criminal history could be sentenced to 3 to 9 months in jail for a first offense, and someone with a criminal history could be sentenced to more time plus a \$20,000 fine per incident. The bill adds a provision requiring agents and brokers to make a good faith effort to determine if the carrier is authorized. Violations of the good faith provisions will be dealt with administratively. This bill is getting support from both sides. It was noted that last week's hearing was cancelled and a new hearing date had been set. Washington had an opportunity to do something about this problem before it got worse and we took action on it. With a felony, unlike a misdemeanor, there is a way to track an individual from state to state. This is not "3 strikes, you're out" legislation; these crimes would have to be committed with sexual motivation or while armed with a deadly weapon before the 3 strikes rule would apply. Ruth noted that five other states have felony statutes and the federal government is supportive.

The Delinquent Insurer/Taxpayer Bill deals with premium taxes. These provisions were exclusive to authorized insurers. This bill will allow us to collect from unauthorized insurers. After failure to pay, interest and/or a penalty can be collected.

Commissioner Kreidler wanted to add that because we lost our legislative liaison prior to this legislative session, it has been difficult for us to prepare for legislative issues. It was for this reason that we didn't give advisory panel members more detailed information in a more timely fashion.

### **Medical Liability Market Assistance Plan Update/Illegal Insurer Warning:**

David Hargreaves provided the MAP submission status report noting that two have withdrawn and are not going to be given coverage. There were 23 valid submissions. Two more submissions will likely be placed – one is tentatively approved. Two were placed with OMIC, five were placed with Physicians (Physicians Insurance Company really stepped up to the plate and accepted placements), two were placed with GE Med Pro, and one was placed with Doctors Co. Overall, it is difficult for physicians to understand what is going on in the market but we have been successful with our placements. The University of Washington's Residency Program is being challenged with a nonrenewal and that action will affect family practices and OB residencies in Boise, Yakima, and Spokane. They could obtain insurance if they drop OB training, but OB training is required to be a family physician. Some are hospital affiliated.

The University is where we train our doctors, so there is even more of a public policy side to this problem now. It is going to be hard to recruit. We need to try and convince insurers that it would be a decent thing to insure. The Commissioner thanked David for all of his work on this project.

Scott Jarvis provided copies of an alert listed on our website. Mississippi took action with a cease and desist order on an unlicensed medical malpractice insurer (First Actual American Insurance Company) that was soliciting physicians' medical liability insurance business by fax. Oregon also has an order in place on the same entity (it has ties to Canby, OR). While we have not seen this entity operating in Washington, insurance producers and physicians need to be alert. Scott encouraged everyone to take a look at the OIC website periodically.

### **Washington Casualty Company Update:**

Jim Odiorne mentioned that Washington Casualty, taken into receivership on March 7, 2003, has been on our screens for a few years. We believe that they will be able to maintain coverage and run it out if they come up with some strategies that will assist in keeping money in the company. They have already downsized their offices and staff. Jim said the company is currently negotiating with plaintiffs and noted that one case in Idaho had a high reserve and the jury came back with a zero judgment. Their insureds are rural hospitals and clinics and closing them would cause many others to suffer. We don't believe any of the hospitals will want to leave the program because they don't really have any other place to go to be insured. We are attempting to bring additional funds into the company. If there is no acquisition, we may need to let it run out. All of Washington Casualty's insureds and the attorneys involved in court cases were informed when the company was taken into receivership. The Board of Washington Casualty consented to receivership; the board of the parent company has not consented. We continue to work with them.

### **Rates and Forms Presentation:**

Beth Berendt provided copies of a Technical Advisory on Credit Scoring Rate Filings and a spreadsheet showing time spent processing filings. She noted that it has been a tough quarter for Property and Casualty filings. The number of filings received are running about the same as last year, however, they are more complex due to terrorism insurance. She further noted that at this time last year, a large number of exclusions were processed. Beth discussed credit scoring legislation, noting that several of the large carriers did not understand the time deadlines in the credit scoring law. The Rates and Forms actuarial staff have been working diligently to get the credit scoring filings processed – problems are being handled on a case-by-case basis. This year, beginning November 26 to date, we received 538 rate filings and 626 form filings. Beth discussed the revised customer service survey noting that companies can now comment on specific topics. She indicated that she would send a link directly to the committee representatives so they can see how we track comments. It was further noted that overall satisfaction ratings continue to be high, with 85.4% satisfied or very satisfied with how their filing was processed. The Rates and Forms Division will be using this tool to plan our goals for the coming year. Commissioner Kreidler added that we know we can do a better job, it takes time and he is pleased with our success to date.

It was noted that there has only been one instance where a company's rate increase request was considered to be out of line, and that there have been no rate decreases in recent years. It was further noted that bodily injury trends are up substantially. Thomas Long stated that asbestos is a big factor and a real concern. Kemper filings are presenting a substantial challenge due to the sheer volume to be processed. Beth pointed out that staff turnover is very low in the Rates and Forms Division, making it a very stable division.

#### **FAIR Plan – Agent Volunteers:**

Beth Berendt provided a packet of information for agents regarding the FAIR Plan. The FAIR Plan provides essential fire coverage all over King County, Tacoma, and Pasco. Beth has volunteered to take the lead position, but Terry Nordahl will actually be participating on the FAIR Plan Commission's Board. Beth noted that other agent members are needed to replace those who have not been attending regularly. It is important that we have active participants who want to be there. If you wish to recommend someone, please email Beth at [BethB@oic.wa.gov](mailto:BethB@oic.wa.gov). We will then contact the person directly and invite them to attend. The Board meets once a year and writes 200-300 policies a year. Robert Quigley is the Executive Director.

#### **Agent-Broker Discipline/Issues Update:**

Scott Jarvis opened this discussion by saying that there has been an increase from 57,000 to 77,000 in agent licensing in the last four years. For the first time, there are more non-resident licensees than resident licensees.

Mike Huske discussed agent investigations and noted that we don't see as many problems in the Property and Casualty market as we do in the Life and Health market. Property and Casualty runs on a traditional business model whereas Life and Health agents don't usually work in or maintain offices. The Investigations Unit has five investigators and three examiners in different locations. Last year we handled 597 cases and secured \$2 million for consumers. In addition to this, the unit receives numerous inquiries by phone. We issued 130 orders (fines, suspensions, etc.). We are starting to see these types of programs come out of the woodwork. We don't know about problems unless people share information, such as a consumer complaint or a call. Mike emphasized that not only are we regulators, but we are also here to help in other ways - remember who we are and where we are located. Mike noted that the agency cancellation statutes were consumer-generated and focused laws. Mike concluded by mentioning that our Public Affairs office has published the list of our disciplinary orders on the OIC web site. This site is updated continually.

#### **Other Issues:**

Thomas Long asked the Commissioner what Governor Locke's budget proposal means to OIC. The Commissioner commented that it is not logical for all of us (state agencies) to be treated the same, especially given the regulatory challenges regulators have to deal with during this hard insurance market.

The Commissioner discussed the Joint Underwriting Authority bill noting that he hopes a JUA will not ever be needed. He understands the companies' position given that there have been some very bad examples nationally. General contractors, realtors, and adult family homes have supported the bill, and 19 community hospitals are already on the watch list by the Dept. of Health. The Commissioner feels that we need to have general authority even though the bill did not pass the House. This is a bill that could come back, and he worries that we could still end up with a bad situation.

Harold stated that carriers' program business is the thing that has hit them the most with losses. Carole mentioned that we haven't analyzed it completely, but tort reform will help. Her recommendation is that if it gets diluted, don't use it – block it and go for the full thing next time around. The Commissioner noted that as bad as the tort system is, you can use it, but you need balance. It is important to make sure doctors and hospitals police and discipline peer mistakes. It is not realistic to expect significant tort reform to pass the Legislature this session. Harold Anderson noted that several of the companies that have offered coverage for contractors said that if there was meaningful tort reform in the state of Washington, they would gladly come back into the market.

Robert Bush said that it was unfortunate, but as he works with contractors he is noticing that half have not renewed their licenses. There are very few markets for multi-family home contractors. Scott believes that contractors are still working and that they just don't have the money behind them to protect them.

Carole asked about Three-Way Workers Comp. The Commissioner stated that Legislators are asking how we (OIC) would do it (noting that proponents are asking for input, not asking for his opinion). The Commissioner noted that he is willing to work with proponents, but it is not the insurance side that is going to carry the issue.

Credit scoring on commercial accounts was brought up but the Commissioner said OIC is not yet aware of a large number of complaints in this area. David Hargreaves mentioned that we need to keep an eye out for trends. There are some cases where insureds have been cancelled for non-pay and then the carrier won't reinstate due to financial risk. Robert noted that separate auto and package policies are being non-renewed based on financial criteria. The Commissioner noted that companies sometimes move in a herd mentality – it is amazing to observe the lack of independence. Dave said that it is a defensive posture.

The Commissioner mentioned he has heard from realtors asking for CLUE reports - he says we will be seeing more of this. Scott Jarvis said that one of the problems he sees is that the insurance industry changes the rules but doesn't inform the public before implementing the changes. If there is forewarning, people tend to handle it better and can adjust their behaviors.

Commissioner Kreidler shared that he knows everyone wrestles with web site management. He invited everyone to take a look at our website and give us their thoughts. Scott Jarvis also mentioned that our Hewlett Packard System will be replaced. Several of the systems we have now don't talk to each other and it is our goal to have our systems interface well. Right now our licensing group can't effectively work with the NAIC using the current system.

Ray Peretti asked why there are no license numbers on the licenses. Scott will follow-up and get back to the group with the answer. (NOTE: The answer is legislation passed last year required the removal of certain identifiers from all professional licenses. As OIC used a Dept. of Licensing generated number that was driver-license based, it had to be removed.)